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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Closed Captioning and Video Description) MM Docket No. 95-176
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS") hereby respectfully submits its comments in response to the Commission's Further Notice of Proposed Rule Making ("Further Notice") in the above docket, in which the Commission seeks comment regarding appropriate rules and policies to promote and ensure the accessibility of televised emergency information to people with hearing disabilities.¹

I. Introduction and Summary

In the Further Notice, the Commission inquires whether separate transitional closed captioning requirements are needed to ensure that hearing-impaired people have access to emergency information programming or whether there are other methods of providing accessibility to this type of programming. While CBS recognizes the critical importance of ensuring that emergency information is readily accessible to viewers with hearing disabilities,

¹ FCC 98-3 (released January 14, 1998).

we believe that a requirement to provide closed captions of emergency programming is impractical and would result in unavoidable rule violations despite broadcasters' best efforts to comply. Because emergency information by its nature arises on short notice, emergency programming could only be captioned in real time. Yet, as the Commission has found, real time captioning services are currently in short supply. Notwithstanding the anticipated increase in the availability of real time captioners, it is evident that not all broadcasters and other video programming providers in an affected region would be able to obtain captioning services in an emergency. Moreover, the delivery of such captioning services, particularly if provided remotely, might well be disrupted by the emergency conditions themselves.

A requirement to caption all emergency programming should not be imposed, since it is neither necessary to, nor the best way of, achieving the goal of ensuring the accessibility of emergency information to hearing-impaired viewers. An alternative -- and superior -- approach is already embodied in Commission regulations. Under an existing rule,² broadcast licensees are already required to provide information about a broad array of emergency situations, either visually or visually and aurally. In recognition that the ultimate goal is to ensure that hearing-impaired viewers receive essential information, the rule specifies that any method of visually presenting emergency information is acceptable. This flexible approach is particularly well suited to the conveyance of information in emergency settings, when licensees need to rush information onto the air. CBS submits that it would be counterproductive to abandon the flexible approach embodied in the current rules for a rigid dictate that all emergency programming be captioned -- a requirement that would leave program

² 47 C.F.R. §73.1250.

providers scrambling to provide emergency information by a method that supply shortages, and the emergency conditions themselves, may make impractical.

II. An Inflexible Rule Requiring Broadcasters To Closed Caption Their Emergency Information Is Impractical and May Foster Unavoidable Noncompliance

There can be no doubt of the importance of assuring that all members of the television viewing public -- whether hearing-impaired or not -- receive adequate information about emergency situations. The key question raised in the Further Notice is whether it is advisable to adopt separate closed captioning requirements to achieve the goal of communicating emergency information to hearing-impaired viewers.

The need to impart emergency information arises, by definition, on extremely short notice. The Further Notice acknowledges that emergency reports usually take the form of interruptions of regularly-scheduled programming or late-breaking additions to live news broadcasts.³ Emergency information obviously cannot be pre-recorded and captioned in advance. Rather, any requirement to caption this type of programming would “oblige providers to obtain real-time captioning services for such programs.”⁴

The Further Notice also acknowledges that, in the Report and Order setting forth the rules and timetable for implementation of closed captioning requirements, the Commission found that real time captioning services were “somewhat limited.” In part for this reason, the

³ Further Notice at ¶3.

⁴ Id. at ¶9.

Commission declined to impose any requirement that live news programming be captioned using real time captioning services.⁵

The brevity of the Further Notice's recitation of these previous findings and conclusions should not mask their decisive significance to the central question posed here. Despite the admitted superiority of real time captioning over electronic newsroom (ENR) captioning -- in which captions are created from the text in a station newsroom's teleprompter -- the Commission declined to "adopt any limits on the methodology that can be used to create closed captioning and [decided to] permit the use of ENR."⁶ This decision was based not only on the existing shortage of real-time captioning services, but also on evidence that expansion of real-time captioning capability would take significant time because of the training needed and superior stenographic skills required. The decision was also premised on the Commission's recognition that "an enormous amount of programming that has not been captioned up until this time will soon have to be captioned,"⁷ and that, therefore, real time captioning services would not be available to all programming providers seeking them during the coming explosion in demand.

These findings of the Commission lead to the inescapable conclusion that it would be impossible for all program providers to convey all their emergency programming through real time captioning. A mere six months after the release of the Report and Order, there is no basis to assume that the underlying realities have changed. If it is not possible for all local

⁵ Id.

⁶ Report and Order in MM Docket No. 95-176, FCC 97-279, at ¶84 (released August 22, 1997) ("Closed Captioning Order").

⁷ Id. at ¶84 & n. 255.

program providers to obtain real time captioning services for their regular news programming, there is even less reason to think they can all obtain these services in emergency situations. The greater competition for captioning created by the generally increased demand occasioned by the new regulations would surely be especially intense at such times. Were captioning requirements imposed, all the program providers in an affected area would be seeking extra real time services -- at the same time -- whenever an emergency struck. If the affected area were large, there might be hundreds of providers simultaneously vying for limited captioning services.

The Further Notice inquires whether the shortage of captioning services might be addressed by the use of captioners located in areas unaffected by the emergency.⁸ Remote captioning services would not provide a solution to the problem. The Commission was well aware of the cost and technical obstacles to using remote captioning services⁹ when it found in the Report and Order that the scarcity of real time services warranted permitting the use of ENR captioning. A local station or other program provider that had not arranged for remote real time captioning services for its regularly scheduled programming would be even less able to do so in emergency situations, with competitive demand at its highest.

There is little reason to assume that real time captioning agencies would have extra captioners available to handle suddenly-arising remote emergencies. Certainly, there would be little tolerance from the regular station customers of these captioning agencies, or from their hearing-impaired viewers, for any interruption of real time captioning of programming in the remote area where the captioning agency was located for the purpose of servicing the area

⁸ Further Notice at ¶11.

⁹ See, e.g., Comments of CBS Inc. at 19-20, 27 (March 15, 1996) submitted in this proceeding ("Initial CBS Comments").

experiencing the emergency. Nor would it be reasonable to disrupt the provision of captioning services under regular contractual arrangements entered into, in part, to fulfill the captioning requirements imposed under the Commission's new regulations.

Whether stations seek services locally or remotely,¹⁰ it is evident that at least some would be unable to caption their emergency programming in real time. Thus, any requirement that all affected program providers caption their emergency programming would inevitably result in rule violations by those providers losing the competition for scarce captioning services. CBS submits that to create regulatory requirements that some providers would find impossible to satisfy is neither fair nor good public policy.

III. Imposition Of A Closed Captioning Requirement Is Unnecessary Because Current Commission Rules Ensure The Accessibility of Emergency Programming To Hearing-Impaired Viewers

It is entirely unnecessary for the Commission to adopt rigid rules imposing real time captioning requirements for emergency information, since rules currently in place ensure that such information is provided to hearing-impaired viewers. Moreover, the current rules wisely allow broadcasters to use any method available to convey emergency messages visually,

¹⁰ Even if remote real time captioning services were generally available -- which is not the case -- imposition of real time captioning requirements based on the assumption that remote services will be reliable in emergency situations defies common sense. For most local stations, use of remote captioning services entails use of audio or audio and video telephone lines to carry the program text to the remote captioner. See Initial CBS Comments at 19-20. For a station to base its ability to convey emergency information on a system relying on telephone services that might be disrupted by emergency weather conditions would seem highly unwise. A captioning requirement for emergency reports should not be imposed for this reason as well, since it could result in less information reaching hearing-impaired viewers than under the current system.

thereby giving them the flexibility to ensure that the information gets to people with the hearing impairments no matter what obstacles may be created by the emergency situation.

The Commission's rules already require that broadcast licensees make their emergency information programming accessible to hearing-impaired viewers.¹¹ The rules define broadly, and in a non-exclusive manner, the circumstances that the Commission deems emergency situations in which the obligation to make such information accessible applies.¹² The rules further require that such broadly defined emergency information must be transmitted either visually or visually and aurally, to ensure its accessibility. Significantly, the rules grant flexibility in the method that may be used to visually present the critical information:

TV stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing) or mechanical printing processes.¹³

Thus, current rules foster the communication of critical information to viewers with hearing disabilities by validating any method that accomplishes the task. In contrast, a rigid rule

¹¹ 47 C.F.R. §73.1250.

¹² Id. at §73.1250(a): "Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to the following: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gasses, widespread power failures, industrial explosions, civil disorders and school closing and changes in school bus schedules resulting from such conditions." Given the nonexclusive nature of this list, the Commission's belief that "warnings and watches of impending changes in weather affecting the safety of viewers" should be deemed emergency situations requiring reporting accessible to the hearing-impaired, see Further Notice at ¶8, can easily be accommodated within the current regulatory scheme.

¹³ §73.1250(h); see also Public Notice, Commission Reminds Licensees About Obligations Contained in Section 73.1250(h) of the Commission's Rules Regarding the Broadcasting of Emergency Information, FCC 90-302, 5 FCC Rcd 6260 (1990).

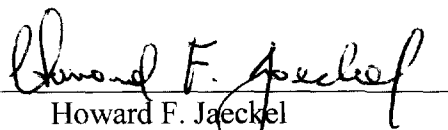
requiring real time captioning would only lead to widespread rule violations if, as is inevitable, real time captioners are unavailable or the emergency conditions themselves disrupt the provision of captioning services. The Commission therefore should retain the flexible approach of the current rule,¹⁴ and decline to make real time closed captioning the only acceptable method of providing hearing-impaired viewers with access to emergency information.

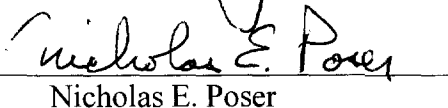
IV. Conclusion

For the forgoing reasons, the Commission should decline to adopt any requirement that emergency information must be conveyed using real time captioning services, and continue to rely on the flexible approach embodied in its current rules.

Respectfully submitted,

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¹⁴ The Further Notice observes that no equivalent obligation to visually present emergency information now exists for cable television operators and other multichannel video program distributors, and inquires whether the goal of ensuring accessibility of emergency information to viewers with hearing impairments would be adequately served by extension of the rule governing broadcast licensees to these providers. See ¶14. We believe an extension of the rule to require such distributors to make the emergency programming they transmit accessible to hearing-impaired viewers by presenting it visually would be both appropriate and sufficient to achieve the Commission's goal.